

PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Readoption with Amendments: N.J.A.C. 14:7 (Natural Gas Pipelines)

Proposed: April 7, 2003 at 35 N.J.R. 1505(a).

Adopted: August 6, 2003 by the New Jersey Board of Public Utilities, Jeanne M. Fox, President, and Frederick F. Butler, Carol J. Murphy, Connie O. Hughes, and Jack Alter, Commissioners

Filed: August 6, 2003 as R. 2003 d. , with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3)

Authority: N.J.S.A. 48:2-13, 48:2-73 et seq., 48:9-33, and 48:10-2 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

BPU Docket Number: GX03010029

Effective Dates: August 6, 2003, Readoption
August 18, 2003, Amendments

Expiration Date: August 6, 2008

The New Jersey Board of Public Utilities ('Board') is readopting, with minor amendments, its rules regarding various aspects of natural gas pipelines, including the construction, operation, and maintenance of transmission and distribution pipelines for the transportation of natural gas by intrastate natural gas pipeline facilities within the State of New Jersey. The rules address where pipelines may be constructed and set requirements for ensuring that the pipelines remain safe both during and after installation. The rules also set the exact specifications that pipeline operators must follow when installing, inspecting, and generally maintaining natural gas pipelines. The primary goal of the changes adopted herein is to enhance the safety standards associated with both pipeline installation and maintenance.

Although the Federal government has prescribed safety standards for pipeline transportation and for pipeline facilities pursuant to 49 U.S.C. §. 60101 et seq., enforcement authority over intrastate lines may be assumed by the various states. Thus, pursuant to a certification submitted annually to the Federal Department of Transportation, New Jersey must enforce the Federal standards in Title 49 of the Code of Federal Regulations and may adopt more stringent standards where warranted. The Board is the State agency with statutory and delegated jurisdiction over all intrastate gas pipelines. The Board is readopting these rules because they are necessary in that they relate directly to the safe, adequate and proper installation, operation and maintenance of pipelines by New Jersey gas pipeline operators.

The proposed readoption with amendments was published on April 7, 2003 at 35 N.J.R. 1050(a). The Board accepted comments on the proposal through June 6, 2003. Two persons submitted comments, which are summarized below, with the Board's responses.

Summary of Public Comments and Agency Responses:

The following persons submitted timely comments on the proposal:

1. Gregory Eisenstark, Public Service Electric and Gas Company (PSE&G)
2. Charles Dippo, South Jersey Gas Company (SJG)
3. Tracey Thayer, New Jersey Natural Gas Company (NJNG)

N.J.A.C. 14:7-1.4 Proscribed Areas

1. COMMENT: (PSE&G) We support the Board's position on operating and installing gas pipelines within 100 feet of any building intended for human occupancy when they operate in excess of 250 psig. However, the proposed language in this section is somewhat unclear, and could be interpreted to require BPU approval for operation of such pre-existing pipelines, even if the Board previously approved the installation. Accordingly, the Board should modify proposed N.J.A.C. 14:7-1.4(a) to clarify that previously approved installations need not seek re-approval to continue operating.

RESPONSE: Previously approved installations need not seek re-approval to

continue operating. The Board believes this rule is sufficiently clear.

2. COMMENT: (PSE&G) We suggest the following rephrasing of section N.J.A.C. 14:7-1.4(b):

(b) Gas pipelines which are designed to be operated at a maximum pressure in excess of 250 psig and are intended [designed] to be installed within 100 feet of any building intended for human occupancy...

RESPONSE: The rule has been clarified to address the commenter's concerns.

3. COMMENT: (SJG) We support the Board's position requiring prior approval by the Board for pipelines to be operated in excess of 250 psig and designed to be installed within 100 feet of any building intended for human occupancy.

However, it is the operation of the pipeline in excess of 250 psig versus the installation of the pipeline, which should require the prior approval of the Board.

Therefore, 14:7-1.4(b) should read as follows:

(b) Gas pipelines which are designed to be operated at a maximum pressure in excess of 250 psig and are designed to be installed within 100 feet of any building intended for human occupancy which is in existence prior to or under construction at the date of execution of the right-of-way agreement or at the date of filing with the Clerk of the Superior Court of a complaint in a

condemnation action shall not be [installed] operated at a pressure in excess of 250 psig without the prior approval of the Board.

RESPONSE: The purpose of this rule is to increase safety by preventing the transport of natural gas through high-pressure pipelines near places where people are commonly present. To increase safety using a workable monitoring method, the Board would have to know of any possibility of an operation of a pipeline in excess of 250 psig and within 100 feet of a human occupied building. By requiring Board approval for the *installation* of any pipelines operating in excess of 250 psig and within 100 feet of a human occupied building the board can ensure the pressures will be monitored and kept within acceptable levels.

N.J.A.C. 14:7-1.11 Valve Assessment and Emergency Closure

4. COMMENT: (PSE&G) We agree with the Board that there may be occasions when submitted information is confidential in nature pursuant to the Open Public Records Act ("OPRA"). However, we disagree with the Board's proposed amendment to N.J.A.C. 14:7-1.11(e), which would remove the confidentiality of a utility's valve assessment and emergency closure plan. OPRA does not require the Board to amend its existing regulations that designate certain documents as confidential – in fact it does the opposite – it specifically provides that such prior regulatory designations are unaffected by

OPRA:

The provisions of this act, P.L. 2001, c. 404, shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to P.L. 1963, C. 73; any other statute; regulation promulgated under the authority of any statute or Executive Order of the governor; ***

[N.J.S.A. 47:1A-9(a)].

In addition, OPRA also allows the Board to designate, by regulation, documents that it will deem confidential. See N.J.S.A. 47:1A-1. Accordingly, there is no need for the Board to amend N.J.A.C. 14:7-1.11 with respect to confidentiality of the utility-submitted information.

Moreover, given the highly sensitive nature of a natural gas utility's valve assessment and emergency closure plan in this era of heightened national security concerns, the Board should be taking action to ensure the confidential status of such information rather than weakening such protections. In the two Executive Orders he issued following OPRA's effective date, Governor McGreevey has made it clear that OPRA and a state agency's regulations adopting under it should not compromise national security citing Executive Orders 21 and 26.

A natural gas utility's valve assessment and emergency closure plan clearly falls under this section of Executive Order No. 21. Therefore, we suggest that the Board delete its proposed amendment to N.J.A.C. 14:7-1.11(e) in its entirety and instead adopt the following provision:

This report, and any other form of the information contained therein, contains security-sensitive information, which, if publicly disclosed, would materially increase the risk or consequences of potential acts of sabotage or terrorism. Therefore, pursuant to Executive Order No. 21 (2002), this information is deemed not to be a public record under the provisions of the Open Public Records Act and will not be available for public disclosure.

RESPONSE: Please see the response to comments 4 and 5, below.

5. COMMENT: (NJNG) The proposed modification to this section of the Code discusses valve assessment and emergency closure plans that have been submitted to the Board. In particular, the confidentiality of the information included in such reports is at issue and we fully believe that not only should confidentiality be automatically applicable to material submitted in relation to this section, but also that this information is found not be a public record under the provisions of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. Such protection is especially important given the likelihood that security sensitive information will be included and, if released to the public, could increase the risk or consequences of compromising the security of our system.

RESPONSE to comments 4 and 5: Pursuant to Executive Order No. 21, Governor McGreevey has directed the Attorney General's office, in consultation with the Domestic Security Preparedness Task Force, to promulgate a rule to

govern whether a record should be subject to public inspection if its examination or copying would substantially interfere with the State's ability to protect and defend against acts of sabotage or terrorism. The Board does not wish to duplicate or interfere with those efforts, which have been delegated to the discretion of those entities.

As stated in the rule, a pipeline operator may request that the information in the valve assessment and emergency closure plan be determined to be confidential. The operator must submit a request for confidentiality to the Board, in accordance with the procedures in the Board's recently adopted rules governing confidentiality determinations, N.J.A.C. 14:1-12. The records custodian will decide, in accordance with the procedures and standards in the confidentiality rules and other applicable legal standards, whether the information submitted requires confidentiality. As noted by the commenter, security is one of the bases the Board uses to determine if information is confidential. The Board is confident that any records that fall under the exemptions for security and safety stated in OPRA and Executive Order No. 21 will be fully protected from public dissemination by the Board's records custodian.

N.J.A.C. 14:7-1.13 Installation of Pipe

6. COMMENT: (PSE&G) We currently have on file with the Board copies of our company's Gas Distribution Standards, of which section 4.75 is the joint-trench

installation procedures. We request that the Board confirm that we may proceed with joint-trench installations as outlined in this procedure, and will consider prior correspondence and discussions with the Board as being approval by the Bureau of Pipeline Safety.

RESPONSE: The Bureau will treat the submittal of this comment as a request that the Board approve the commenter's previously submitted Gas Distribution Standards. These standards will be reviewed as if they are a new submittal for PSE&G's joint-trench installation procedure. The Bureau will notify the commenter within 30 business days after August 18, 2003 if the joint-trench procedure fails to meet the standard set forth in 49 C.F.R. 192.325.

N.J.A.C. 14:7-1.30 Accidents

7. COMMENT: (PSE&G) We agree with the Board's elimination of redundant provisions of the code.

RESPONSE: The Board acknowledges this comment in support of the rules.

N.J.A.C. 14:7-1.37 Revisions to Operating and Maintenance Standards

8. COMMENT: (PSE&G) We have concerns with respect to the Board's proposed new regulation at N.J.A.C. 14:7-1.37. This provision would require a utility to obtain approval by the Bureau of Pipeline Safety prior to revising "any operating and maintenance standard that affects the frequency or performance

of inspections, investigations, surveys or testing.” We make numerous revisions to these O & M standards throughout the year, many of which are minor in nature. Since January 2002, there were fifteen interim revisions issued that revised twenty one sections of the Gas Distribution Standards. The proposal to have the Board (or the Bureau) approve all revisions to the numerous inspection and testing standards that are maintained by the four gas utilities prior to implementation would create a sizeable administrative workload for the Board and would prevent the companies from implementing cost-saving initiatives in a timely manner. The requirement to show that all changes “...will not decrease the level of safety provided by the existing standard” would be extremely difficult to meet, as the level of safety provided by the existing standard” would be extremely difficult to meet, as the level of safety is purely subjective and cannot be documented to a sufficiently high qualitative degree. Therefore, we respectfully request that the Board consider removing proposed N.J.A.C. 14:7-1.37 in its entirety; or, in the alternative, that the Board consider the following in place of the Board’s proposed subsection:

A pipeline operator shall not revise any 49 C.F.R. 192 required operating and maintenance schedule that affects the frequency or purpose or inspections, investigations, surveys or testing, without conferring with the Bureau of Pipeline Safety.

RESPONSE: Please see the response to comments 8, 9, and 10, below.

9. COMMENT: (SJG) We support the Board's role in overseeing pipeline safety, however the proposed rule as written, provides the Bureau of Pipeline Safety the ability to disallow changes to operating procedures which may be in total compliance with the code and standard industry practice. The Board and the Bureau of Pipeline Safety already have the authority to effect amendments to a company's operating and maintenance standards, plans and procedures through the existing provisions of 49 C.F.R. 192.603(c). Therefore, the Board should consider removing the proposed section 14:7-1.37 as written in its entirety.

RESPONSE: Please see the response to comments 8, 9, and 10, below.

10. COMMENT: (NJNG) The proposed regulation requires that no operating and maintenance (O&M) standards affecting the frequency or performance of inspections, investigations, surveys or testing be modified without prior approval of the Board. The adoption of this regulation would both place on onerous burden on the administrative staff of the Board and delay the implementation of changes to O&M manuals. During the normal course of business over a twelve month period, we may make necessary changes to O&M manuals, many of them minor in nature. We recommend that this regulation be eliminated or that it be modified to state:

that a pipeline operator cannot make changes to regulations
pursuant to the Code of Federal Regulations, Section 192 that

affect the frequency or purpose of inspections, surveys or testing
without notification of the Board Staff.

In that manner, we can move ahead with planned modifications to O&M standards and the Board Staff is still afforded the opportunity to review the changes.

RESPONSE to comments 8, 9, and 10: The Board and the Bureau of Pipeline Safety need a method of reviewing the changes in operating and maintenance procedures before the procedures become operator policy, in order to assure that a minimum level of safety is maintained. This rule, as adopted, gives the Bureau the opportunity to review operating and maintenance procedure changes before they become policy. The commenter's proposed revisions simply inform the Bureau of these changes. Submittal of minor changes in procedures should not be burdensome. In its revision proposal, the operator need only summarize the minor change it plans to adopt, not describe the entire procedure that is being changed. This minimal description should not create a tremendous workload for the Board, the Bureau, or the companies. Regarding the standard that the Board will apply in evaluating proposed revisions, the rule has been modified upon adoption to clarify that the standards must comply with 49 C.F.R. 192.

Federal Standards Statement

Executive Order No. 27 (1994), and P.L. 1995, c.65 (N.J.S.A. 52:14B-22 through 24), require State agencies that adopt State rules which exceed any

Federal requirements to include in the rulemaking document a comparison with Federal law. The corresponding Federal law is found in the rules of the United States Department of Transportation at 49 C.F.R. §§191 and 192. This readoption of N.J.A.C. 14:7 with amendments is comparable with the corresponding Federal law in all but a few areas, which are discussed below.

The State system for classifying pipelines based on their location in relation to population density, found at N.J.A.C. 14:7-1.3, puts some pipelines into a more heavily regulated class than the same pipeline would be in under the Federal classification system at 49 C.F.R. §192.5. This may result in some costs for pipeline operators, although most have voluntarily chosen to meet higher standards than Federally required. To the extent that costs are incurred, the Board has determined that these costs are justified in order to ensure safety.

The Board's rules governing the spacing of sectionalizing shutoff valves, found at N.J.A.C. 14:7-1.10(a) and (b), are somewhat more stringent than corresponding Federal rules at 49 C.F.R. §192.181(a). Sectionalizing valves allow a pipeline operator to stop the flow of gas through a section of pipeline in cases of pipeline failure or emergency. The Federal rule requires valves to be spaced "so as to reduce the time to shut down a section of main in an emergency", and states that the exact spacing shall be determined by pressure, pipe size, and local conditions. N.J.A.C. 14:7-1.10(a) requires that, at a minimum, a pipeline meet the Federal standard, but also adds more stringent requirements. Specifically, if a pipeline is classified as Class 1 or 2 under the

Federal rules, the State rules require that the pipeline comply with the more stringent Federal standards that would apply to Class 3 pipelines. In addition, N.J.A.C. 14:7-1.10(b) requires extra valves within city boundaries as needed for prompt gas shutoffs in an emergency. To the extent that this rule requires an operator to install and maintain more valves, there will be some minimal cost incurred. However, the Board has determined that the amendment is necessary to ensure the protection of people, property and the environment in the event of pipeline failure or emergency, especially in densely populated areas.

The State rule provisions governing reporting of accidents are slightly more stringent than the corresponding Federal requirements. N.J.A.C. 14:7-1.30(b)5 is amended to delete redundant provisions and instead to refer to standard State accident reporting requirements found in N.J.A.C. 14:2 and 3. These reporting requirements list the types of incidents that must be reported. While the Federal requirements for reporting accidents at 49 C.F.R. §§191.9 and 191.15, require the reporting of certain events that involve the release of gas, they do not contain the State requirement that any accidental ignition of gas be reported. In addition, the State reporting requirements also set a lower threshold dollar amount for reporting incidents. This enables the Board to exercise better oversight of pipeline operator compliance with emergency response rules and company emergency response procedures. This additional reporting greatly assists the Board in investigating gas pipeline incidents, by

capturing a greater amount of incident data than could be obtained under the Federal requirements.

The Board believes that these more stringent reporting requirements are necessary and justified. Accidental ignition of gas by a gas pipeline operator is an inherently dangerous situation that may merit Board investigation, and therefore the reporting of these incidents should be specifically required. Further, because New Jersey is more densely populated and more industrialized than most of the nation, the State is more likely to experience pipeline accidents and to suffer greater injury and damage in the event of an accident. Thus, a slightly more stringent reporting requirement is justified for safety reasons. Finally, there is little or no cost to the regulated community in complying with the more stringent requirements, since the required reporting is easily performed using current technology.

N.J.A.C. 14:7-1.37 provides an administrative procedure for pipeline operators to obtain approval from the Board of revisions to their operation and maintenance procedures. The Federal standards do not require this. However, due to the recent economic downturn, many natural gas pipeline operators in New Jersey are reviewing operating and maintenance standards, including those relating to inspections and testing, to minimize costs. This new section will enable the Board to review such proposed changes before they become operator policy, and to ensure that any cost cutting measures do not compromise the safety of a natural gas pipeline.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

14:7-1.1A Definitions

(No change from proposal.)

14:7-1.4 Proscribed areas

(a) (No change from proposal.)

(b) Gas pipelines which are designed to be operated at a maximum pressure in excess of 250 psig *[and are designed to]* ***shall not*** be installed ***without prior Board approval and shall be operated within limits set by the Board, if the pipeline will be located*** within 100 feet of any building intended for human occupancy which is in existence prior to, or under construction at, the date of execution of the right-of-way agreement or *[at]* the date of filing with the Clerk of the Superior Court of a complaint in a condemnation action *[shall not be installed without the prior approval of the Board]*.

14:7-1.11 Valve assessment and emergency closure

(a) – (e) (No change from proposal.)

14:7-1.13 Installation of pipe

(a) (No change from proposal.)

(b) If a pipeline operator wishes to install more than one utility line in a single trench, the operator shall first prepare and submit a joint-trench installation procedure to the Bureau of Pipeline Safety for *[approval]* ***review under the procedure established in 1.37***. No pipeline operator shall perform a joint trench installation except in accordance with a joint-trench procedure previously *[approved]* ***reviewed*** by the Bureau ***for consistency with 49 C.F.R. 192.325***.

(c) A pipeline operator shall provide for the inspection of all joint-trench pipe installations, and shall insure that the installation complies with the joint-trench procedures previously *[approved]* ***reviewed under the procedure established in 1.37*** by the Bureau of Pipeline Safety, as well as with the applicable provisions of the Federal Code.

14:7-1.30 Accidents

(No change from proposal.)

14:7-1.37 Revisions to operating and maintenance standards

(a) A pipeline operator shall not revise any operating and maintenance standard that affects the frequency or performance of inspections, investigations, surveys, or testing, without *[prior approval by the Bureau of Pipeline Safety]* ***submitting the revision to the Bureau of Pipeline Safety for review to determine if the revision will affect compliance with the safety requirements of 49 C.F.R. 192***.

(b) *[In order to obtain approval of such a revision, t]* ***T**he pipeline operator shall submit the proposed revision to the Bureau of Pipeline Safety at least 30 business days prior to implementing the revised operating and maintenance standard. The submittal shall demonstrate that the revisions will not decrease the level of safety provided *[by the existing standard.]* ***by 49 C.F.R. 192***.

(c) If the Bureau of Pipeline Safety finds that the proposed revision *[may reduce safety from existing levels,]* ***affects the ability of the pipeline operator to meet the safety requirements of 49 C.F.R. 192***, the Bureau shall notify the operator within 30 business days after receiving the proposed

revision, shall direct the operator not to institute the proposed revision, and shall provide the operator with one opportunity to resubmit an updated proposal. The Bureau will accept, modify, or deny the resubmitted proposal within 10 business days. ***If the Bureau does not notify the operator under this section within 30 business days after receiving the initial proposed revision, the operator may implement the revision. Notwithstanding this subsection, the Bureau shall require the operator to amend its operation and maintenance standards as necessary if those standards are later discovered to fail the safety requirements of 49 C.F.R. 192.***